



CMS Certification Number (CCN): 365206

May 6, 2019
By Fax Only

Uptown Westerville Healthcare
Attn: Administrator
140 Old County Line Road
Westerville, OH 43081-1002

Dear Administrator:

**SUBJECT: CONTINUATION OF PREVIOUSLY IMPOSED REMEDIES AND
IMPOSITION OF ADDITIONAL REMEDY**

Cycle Start Date: November 21, 2018

PRIOR NOTICE

By letter dated December 21, 2018, the Ohio Department of Health (ODH) informed you that they were imposing remedies due to the failure of your facility to be in substantial compliance with the applicable Federal requirements for nursing homes participating in the Medicare and Medicaid programs. This notice also advised you that, should you fail to attain substantial compliance by May 21, 2019, the Centers for Medicare and Medicaid Services (CMS) would impose mandatory termination from the Medicare and Medicaid programs.

SURVEY RESULTS

On November 21, 2018, December 13, 2018, January 8, 2019, January 23, 2019, February 4, 2019, March 6, 2019, April 1, 2019, April 9, 2019 and April 22, 2019 complaint surveys were completed at Uptown Westerville Healthcare by the Ohio Department of Health (ODH) to determine if your facility was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs. These surveys found that your facility was not in substantial compliance, with the most serious deficiency at scope and severity (S/S) level G cited as follows:

- F692 -- S/S: G -- 483.25(g)(1)-(3) -- Nutrition/Hydration Status Maintenance

The State agency advised you of the deficiencies which led to this determination and provided you with a copy of the survey reports (CMS-2567).

SUMMARY OF ENFORCEMENT REMEDIES

As a result of your facility's continued noncompliance, we are imposing the following additional remedy:

- Mandatory Termination effective May 21, 2019

In addition, the following previously imposed remedies will remain in effect:

AKC

- Directed In-service Training effective January 8, 2019
- Discretionary Denial of Payment for New Admissions effective February 9, 2019

The authority for the imposition of remedies is contained in subsections 1819(h) and 1919(h) of the Social Security Act ("Act") and Federal regulations at 42 CFR §488 Subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies.

DENIAL OF PAYMENT FOR NEW ADMISSIONS

Denial of payment for all new Medicare admissions was imposed effective February 9, 2019. This action is taken pursuant to Section 1819(h)(2)(B) of the Act. We are notifying the Novitas Solutions, Inc. that the denial of payment for all new Medicare admissions is effective on February 9, 2019. We are further notifying the State Medicaid agency that they must also deny payment for all new Medicaid admissions effective February 9, 2019 pursuant to Section 1919(h)(2)(A) of the Act and Federal regulations at 42 CFR § 488.417(a).

You should notify all Medicare and Medicaid residents admitted on or after this date of the restriction. The remedy must remain in effect until your facility has been determined to be in substantial compliance or your provider agreement is terminated. Please note that the denial of payment for new Medicare admissions includes Medicare beneficiaries enrolled in managed care plans. It is your obligation to inform Medicare managed care plans contracting with your facility of this denial of payment for new admissions.

TERMINATION

Your Medicare agreement is being terminated effective May 21, 2019 due to your facility's failure to attain substantial compliance with the participation requirements. This action is mandated by the Act at Sections 1819(h) and 1919(h) and Federal regulations at 42 CFR § 488.456 and § 489.53.

The Medicare program will not make payment for services furnished to residents admitted on or after February 9, 2019. For residents admitted prior to February 9, 2019, payment may continue to be made for up to 30 days of services after May 21, 2019, the date of termination. A list showing the names and health insurance claim numbers of Medicare beneficiaries who were being served by your facility on May 21, 2019 should be forwarded to the Centers for Medicare & Medicaid Services, Division of Survey and Certification, 233 North Michigan Avenue, Chicago, Illinois 60601-5519. Note that the termination of payments for Medicare includes Medicare beneficiaries enrolled in Medicare managed care plans. It is your obligation to inform Medicare managed care plans contracting with your facility of this action.

Since your facility also participates in the Medicaid program, termination of your Medicaid provider agreement will also be necessary in light of your noncompliance with the participation requirements. This action is mandated by Section 1919(h)(3)(D) of the Act. The date of termination of your Medicaid provider agreement is May 21, 2019. Federal Financial Participation (FFP) will be continued for up to 30 days of covered services after May 21, 2019 for those qualified residents admitted prior to February 9, 2019. This continued payment is based on the condition that the Medicaid agency is making reasonable efforts to transfer the residents to other facilities.

We are required to provide the general public with notice of an impending termination and will publish a notice prior to the effective date of termination. If termination goes into effect, you may

take steps to come into compliance with the Federal requirements for long term care facilities and reapply to establish your facility's eligibility to participate as a provider of services under Title XVIII of the Social Security Act. Should you seek re-entry into the Medicare program, the Federal regulation at 42 CFR § 489.57 will apply.

NURSE AIDE TRAINING PROHIBITION

Federal law, as specified in the Social Security Act at § 1819(f)(2)(B) and § 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility which, within the previous two years, has operated under a § 1819(b)(4)(C)(ii)(II) or § 1919(b)(4)(C)(ii) waiver (i.e., waiver of full-time registered professional nurse); has been subject to an extended or partial extended survey as a result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than \$10,697.00; has been subject to a denial of payment, the appointment of a temporary manager or termination; or, in the case of an emergency, has been closed and/or had its residents transferred to other facilities.

Since your facility did not achieve substantial compliance by February 9, 2019, the remedy of denial of payment for new admissions went into effect and this provision is applicable to your facility. Therefore, Uptown Westerville Healthcare is prohibited from offering or conducting a Nurse Aide Training and/or Competency Evaluation Program (NATCEP) for two years from February 9, 2019. You will receive further information regarding this from the State agency. This prohibition is not subject to appeal. Further, this prohibition remains in effect for the specified period even though selected remedies may be rescinded at a later date if your facility attains substantial compliance. However, under Public Law 105-15, you may contact the State agency and request a waiver of this prohibition if certain criteria are met.

APPEAL RIGHTS

You were previously advised of your right to appeal the noncompliance that resulted in the imposition of the following remedies:

- Directed In-service Training effective January 8, 2019
- Discretionary Denial of Payment for New Admissions effective February 9, 2019

Please refer to that notice and note the deadline for that appeal. As of this date, we have not received a request for a hearing.

This formal notice imposed:

- Mandatory Termination effective May 21, 2019

If you disagree with the finding of noncompliance which resulted in this imposition and the finding of noncompliance which resulted in the continuation of previously imposed remedies, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board (DAB). Procedures governing this process are set out in Federal regulations at 42 CFR § 498.

You are required to file your appeal electronically at the Departmental Appeals Board Electronic Filing System Web site (DAB E-File) at <https://dab.efile.hhs.gov/>. To file a new appeal using DAB E-File, you first need to register a new account by: (1) clicking Register on the DAB E-File home page; (2) entering the information requested on the "Register New Account" form; and (3) clicking Register Account at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB E-File on your behalf.

The e-mail address and password provided during registration must be entered on the login screen at https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he is a party or authorized representative. Once registered, you may file your appeal by:

- Clicking the **File New Appeal** link on the Manage Existing Appeals screen, then clicking **Civil Remedies Division** on the File New Appeal screen.
- Entering and uploading the requested information and documents on the "File New Appeal-Civil Remedies Division" form.

At minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's appeal rights. A request for a hearing should identify the specific issues and the findings of fact and conclusions of law with which you disagree, including a finding of substandard quality of care, if applicable. It should also specify the basis for contending that the findings and conclusions are incorrect. The DAB will set the location for the hearing. Counsel may represent you at a hearing at your own expense.

All documents must be submitted in Portable Document Format ("PDF"). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions for using DAB E-File in cases before the DAB's Civil Remedies Division can be found by clicking the button marked **E-Filing Instructions** after logging-in to DAB E-File.

For questions regarding the E-Filing system, please contact E-File System Support at OSDABImmediateOffice@hhs.gov.

Please note that **all** hearing requests must be filed electronically unless you have no access to the internet or a computer. In those circumstances, you will need to provide an explanation as to why you are unable to file electronically and request a waiver from e-filing with your written request. Such a request should be made to:

Department of Health and Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
330 Independence Avenue, SW
Cohen Building, Room G-644
Washington, D.C. 20201

A request for a hearing must be filed no later than 60 days from the date of receipt of this notice.

INFORMAL DISPUTE RESOLUTION

The State agency offered you an opportunity for informal dispute resolution (IDR) following its survey visits. A request for IDR will not delay the effective date of any enforcement action. However, IDR results will be considered when applicable.

CONTACT INFORMATION

If you have any questions regarding this matter, please contact Anna J. Olson, MPH, Principal Program Representative, at (312) 353-2888. Information may also be faxed to (443) 380-7312.

Sincerely,



Gregg Brandush
Acting Associate Regional Administrator
Midwest Division of Survey & Certification

cc: Ohio Department of Health
Ohio Department of Medicaid
State LTC Ombudsman
KePro
U.S. Department of Justice - Southern District of Ohio
Novitas Solutions, Inc.